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Federal Communications Commission
Washington, D.C. 20554

DEC 29 1997

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DEC 29 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

The Honorable John Breaux
United States Senate
516 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Breaux:

Thank you for your letter dated December 4, 1997, on behalf of your constituent, Aaron F. Broussard, Council Chairman, Jefferson Parish, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his parish. Your constituent's letter refers to three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

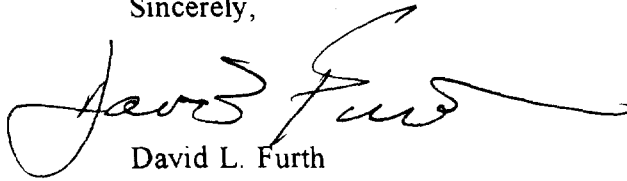
The Honorable John Breaux

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David Furth", with a large, sweeping flourish extending to the right.

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

j:\congress\7764

JOHN BREAU
LOUISIANA

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CHIEF DEPUTY WHIP

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United States Senate

WASHINGTON, DC 20510-1803

December 4, 1997

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BF

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Mr. Dan Phythyon
Director, Office of Legislative and
Intergovernmental Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, DC 20554

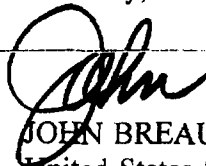
Dear Mr. Phythyon:

I have been contacted by the Honorable Aaron Broussard,
Chairman of the Jefferson Parish Council, regarding concerns about
proposed preemption of local zoning for cellular, telephone, and
television towers.

Please give the views and concerns of every appropriate
consideration within federal guidelines. Any information you could
provide responding to their concerns would be greatly appreciated. Your
reply may be forwarded to the attention of Jeff Lewis.

Thank you for your attention and assistance.

Sincerely,



JOHN BREAU
United States Senator

JB/jhl
Enclosure



JEFFERSON PARISH LOUISIANA

97 NOV 10 PM 3: 22

Aaron F. Broussard

Chairman

Jefferson Parish Council

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November 3, 1997

The Honorable John B. Breaux
U. S. Senator
516 Hart Senate Office Bldg.
Washington, D. C. 20510

The Honorable William J. Jefferson
U. S. Representative
240 Cannon House Office Bldg.
Washington, D. C. 20515

The Honorable Mary Landrieu
U. S. Senator
702 Hart Senate Office Building
Washington, D. C. 20510

The Honorable W. J. "Billy" Tauzin
U. S. Representative
2183 Rayburn House Office Bldg.
Washington, D. C. 20515

The Honorable Robert Livingston
U. S. Representative
2406 Rayburn House Office Bldg.
Washington, D. C. 20515

Dear Senators and Congressmen:

I am writing to express Jefferson Parish's concern with the Federal Communications Commission's (FCC) proposed preemption of local zoning of cellular, radio and TV towers. Ongoing FCC rule makings would make the FCC a federal zoning authority for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please contact the FCC and tell it to cease efforts which violate the intent of Congress, the Constitution and the principles of Federalism.

Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act, with the sole exception that municipalities cannot regulate radiation from cellular antennas if within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U. S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a locality's decision are, need not be

Senators and Congressmen

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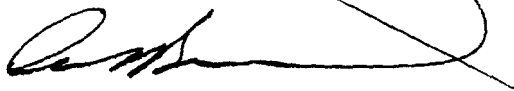
bound by the stated reasons given by a locality and doesn't even need to wait until a local planning decision is final before the FCC acts.

The FCC is also proposing a rule banning the moratoria that some localities, including Jefferson Parish, impose on cellular tower construction while revisiting their zoning ordinances in an effort to accommodate the industry and the increase in the number of required facilities. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

The FCC's proposed preemption of radio and television towers sets an artificial limit of 21 to 45 days for localities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the locality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. The FCC's proposed rule would prevent localities from considering the impacts such towers have on property values, the environment or aesthetics and safety concerns.*

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion of local zoning authority in cases WT97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

Very truly yours,



Aaron F. Broussard
Council Chairman

AFB:rk

cc: All Councilmen, Tim Coulon
Ed Durabb, D. J. Mumphy

- Appeals of zoning and permit denials would go to the FCC, bypassing local agencies and courts. This is particularly disconcerting given the density of Jefferson Parish and the recent example of the 2000 foot television tower which recently toppled in Mississippi. Had that tower toppled in Jefferson, death and destruction would have resulted.